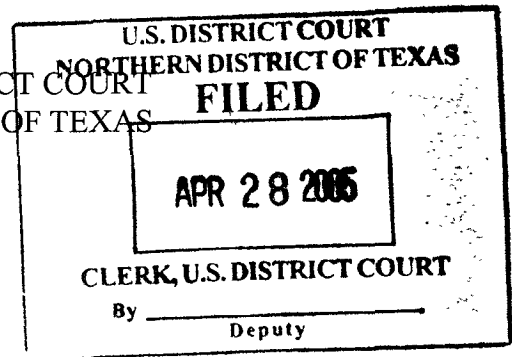


IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION



MONSHON McGARRAH,

Petitioner,

v.

DOUGLAS DRETKE, Director,  
Texas Department of Criminal Justice,  
Institutional Division,

Respondent.

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2:05-CV-0061

**REPORT AND RECOMMENDATION TO  
DISMISS FOR FAILURE TO PAY FILING FEE**

On February 24, 2005, petitioner MONSHON McGARRAH filed with this Court a Petition for a Writ of Habeas Corpus by a Person in State Custody. By his habeas application, petitioner appears to challenge a prison disciplinary proceeding conducted at the Roach Unit in Childress County, Texas.

Petitioner did not submit with his habeas petition any payment to satisfy the requisite filing fee, nor did petitioner submit an Application to Proceed *In Forma Pauperis*. Instead, petitioner submitted a certified *in forma pauperis* data sheet, and what appears to be an incomplete Form I-25 entitled "Inmate Request for Withdrawal." On March 25, 2005, this Court entered an Order granting petitioner permission to proceed *in forma pauperis* temporarily, pending either payment of the \$5.00 filing fee or submission of an Application to Proceed *In*

*Forma Pauperis*. Petitioner was given twenty (20) days from the date of the Court's Order in which to properly supplement or pay the filing fee.

As of this date, petitioner has failed to comply with the Court's Order by paying the \$5.00 filing fee or submitting an Application to Proceed *In Forma Pauperis*. Moreover, petitioner was admonished that, "The failure of petitioner to properly supplement or pay the filing fee within the time allowed by this Order, will result in an immediate recommendation for the dismissal of this case without further notice." Because of petitioner's failure to comply with a direct order from the Court, it is the opinion of the undersigned that petitioner's case should be dismissed.

RECOMMENDATION

It is the RECOMMENDATION of the Magistrate Judge that the habeas application filed by petitioner MONSHON McGARRAH be DISMISSED for failure to pay the \$5.00 filing fee.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a file-marked copy of this Report and Recommendation to petitioner by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 28<sup>th</sup> day of April 2005.

  
CLINTON E. AVERITTE  
UNITED STATES MAGISTRATE JUDGE

**\* NOTICE OF RIGHT TO OBJECT \***

Any party may object to these proposed findings, conclusions and recommendation. In the event a party wishes to object, they are hereby NOTIFIED that the deadline for filing objections is eleven (11) days from the date of filing as indicated by the file mark on the first page of this recommendation. Service is complete upon mailing, Fed. R. Civ. P. 5(b), and the parties are allowed a 3-day service by mail extension, Fed. R. Civ. P. 6(e). Therefore, any objections must be filed on or before the fourteenth (14<sup>th</sup>) day after this recommendation is filed. See 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); R. 4(a)(1) of Miscellaneous Order No. 6, as authorized by Local Rule 3.1, Local Rules of the United States District Courts for the Northern District of Texas.

Any such objections shall be made in a written pleading entitled "Objections to the Report and Recommendation." Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. See *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

**If petitioner pays the \$5.00 filing fee within the objection period, or submits proper documentation evidencing the authorization of the disbursement of the requisite funds, the recommendation of dismissal will be withdrawn. Petitioner is advised, however, that the payment of the filing fee will not guarantee that this Court will reach the merits of petitioner's application.**